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### The Survey of New York Practice Table of Contents

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# THE SURVEY OF NEW YORK PRACTICE

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### INTRODUCTION\*

In this fourth issue of Volume 60, *The Survey* examines a va-

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\* The following abbreviations will be used uniformly through *The Survey*:

New York Civil Practice Law and Rules (McKinney) .....	CPLR
New York Civil Practice Act .....	CPA
New York Criminal Procedure Law (McKinney) .....	CPL
New York Code of Criminal Procedure .....	CCP
Real Property Actions and Proceedings Law (McKinney) .....	RPAPL
Domestic Relations Law (McKinney) .....	DRL
Estates, Powers and Trusts Law (McKinney) .....	EPTL
General Municipal Law (McKinney) .....	GML
General Obligations Law (McKinney) .....	GOL
D. Siegel, New York Practice (1978) .....	SIEGEL
Weinstein, Korn & Miller, New York Civil Practice (1982) .....	WK&M
<i>The Biannual Survey of New York Practice</i> .....	<i>The Biannual Survey</i>
<i>The Quarterly Survey of New York Practice</i> .....	<i>The Quarterly Survey</i>
<i>The Survey of New York Practice</i> .....	<i>The Survey</i>

Extremely valuable in understanding the CPLR are the five reports of the Advisory Committee on Practice and Procedure. They are contained in the following legislative documents and will be cited as follows:

riety of issues of recent importance in New York law. Among the cases discussed is *People v. Magliato*. In *Magliato*, the New York Court of Appeals rejected a defendant's contention that the defense of justification is available to a person who threatens and actively prepares to use deadly physical force upon an attacker, without first attempting to retreat. The Court of Appeals held, in analyzing both the definition of "deadly physical force" in CPL 10.00(11) and the defense of justification under CPL 35.15(2), that the justification defense is not available when a defendant threatens the use of deadly physical force, despite a lack of intent to actually inflict bodily injury upon the victim.

*The Survey* also examines the Appellate Division, Second Department decision in *Skyline Agency v. Ambrose Coppotelli, Inc.*, in which CPLR 320 was interpreted. The *Skyline* court held that an unauthorized appearance of an attorney did not confer jurisdiction upon a resident-defendant. The previous New York rule had been that even such unauthorized appearance by counsel conferred jurisdiction upon a defendant, however such judgments in the Second Department now seem to be subject to collateral attack based upon the *Skyline* doctrine.

Finally, *The Survey* addresses the Court of Appeals' recent analysis of municipal corporation liability in tort in *Crosland v. New York City Transit Authority*. The *Crosland* court held that a municipally owned carrier was not immune from liability when its employees failed to summon aid when witnessing an attack upon a passenger.

The members of Volume 60 hope that the analysis of the cases contained in *The Survey* will be of interest to the New York bench and bar.

#### CIVIL PRACTICE LAW AND RULES

#### *CPLR § 320: Unauthorized appearance by an attorney does not*

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1957 N.Y. Leg. Doc. No. 6(b) .....	FIRST REP.
1958 N.Y. Leg. Doc. No. 13 .....	SECOND REP.
1959 N.Y. Leg. Doc. No. 17 .....	THIRD REP.
1960 N.Y. Leg. Doc. No. 120 .....	FOURTH REP.
1961 Final Report of the Advisory Committee on Practice and Procedure .....	FINAL REP.
Also valuable are the two joint reports of the Senate Finance Assembly Ways and Means Committee:	
1961 N.Y. Leg. Doc. No. 15 .....	FIFTH REP.
1962 N.Y. Leg. Doc. No. 8 .....	SIXTH REP.